

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 439 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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MIYA MOHMED GULAM MOHMED GADIWALA

Versus

ABBAS MIYA NUR MOHMED JARIWALASHAIKH & 2  
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Appearance:

MR ZA SHAIKH for Petitioner  
MR RM VIN for Respondent No. 1, 2, 3  
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CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 15/03/2000

ORAL JUDGEMENT

#. The petitioner is the defendant-tenant against whom the respondent-plaintiffs hadfiled Civil Suit No.417 of 1977 in the court of the learned Civil Judge (JD), Bharuch.

#. The case of the plaintiff is that the plaintiff is a trust registered under the provisions of the Bombay Public Trusts Act and that the plaintiffs nos 1 and 2 are the trustees of the said Trust. That the plaintiff-Trust is the owner of a property situated in the locality known as Hajipir Kirmani Bharuch more particularly described in para 2 of the plaint. That the defendant is a tenant of one room of the suit property at a monthly rent of Rs. 10/-. That the defendant is in arrears of rent from 1.4.1976 to 30.4.1977 for a period of 13 months and accordingly he was served with a demand notice as required under section 12(3) of the Bombay Rent Act. The defendant-tenant received the said notice. But inspite of receiving the same he denied to have received the said notice nor paid any rent. Ultimately therefore, aforesaid suit was filed for possession on the ground of arrears of rent as well as for decree for arrears of rent.

#. The defendant appeared in the suit and filed his written statement at exh.24.

#. He denied that the rent of the suit premises is Rs. 10/- p.m. According to him he was paying the rent regularly. The defendant contended that there is mismanagement in the accounts of the trust by the trustees and for that a case was pending in the office of the Charity Commissioner and with a view to avoid their responsibility of the trustees they have issued false notice. According to the defendant he paid all the rent and it was not shown in the account books. On these and other grounds the suit of the plaintiff was resisted by the defendant.

#. The Trial Court framed issues at exh.25. After recording the evidence and after hearing the arguments of both the sides the Trial Court came to the conclusion that the defendant - tenant is in arrears of rent for more than 6 months and that he was required to pay the standard rent of the suit premises which was fixed at Rs.10/- p.m. Therefore, on the ground of arrears of rent, the Trial Court decreed the suit of the plaintiff.

#. Aforesaid decree of the Trial Court was challenged by the defendant-tenant by filing Regular Civil Appeal No. 81 of 1981 before the District Court at Bharuch. Said appeal was heard and decided by the learned District Judge, Bharuch who ultimately by his judgment and order dated 31.12.82 dismissed the appeal.

#. The defendant tenant has challenged the aforesaid

judgment and order of the Appellate Court by filing this Revision Application.

#. At the time of hearing of this Revision Application Mr. Shaikh learned advocate for the petitioner is not present.

#. I have gone through the judgments of the courts below as well as the oral and documentary evidence on record.

##. Looking to the record, it is clear that the defendant has not paid the arrears of rent within one month from the date of receipt of the notice nor the dispute of standard rent has been raised within one month of the date of receipt of the suit notice. Prima-facie there is no defence with the defendant for non payment of the rent of the suit premises.

##. The Appellate Court has considered various receipts which were given by the plaintiff to the defendant at the time of payment of rent. The plaintiff had produced the bill book or cash book of the Trust at exh.53. Accounts are maintained in the said book. As per the same it is clear that the defendant-tenant was in arrears of rent as demanded in the suit notice.

##. Since no dispute of standard rent is raised within one month of the date of receipt of the suit notice and since the defendant-tenant had failed to deposit the arrears of rent within one of the date of receipt of the suit notice the case would fall under section 12(3)(a) of the Bombay Rent Act as per the decision of the Supreme Court reported in 31 GLR 209 in the case of Arjun Khia al Makhijani vs. Jamanadas C. Tuliani & ors. Therefore, the courts below are right in pass a decree under section 13(3)(a) of the Bombay Rent Act. The Appellate had not believed the say of the defendant that he had approached the trustees of the plaintiff-Trust to pay the amount of rent after the receipt of the suit notice but the trustees had declined to accept the rent. The Appellate Court has considered the fact that the decree is passed by the Trial court on the ground of arrears of rent and therefore, whether any hardship will be caused to the defendant-tenant is not material. In that view of the matter, it cannot be said that the Appellate Court has committed any mistake in confirming the decree passed by the Trial Court on the ground of arrears of rent. It was argued before the Appellate Court as discussed in para 12 of its judgment that the defendant tenant is a poor man and he had practically no income to pay the rent and

therefore it cannot be said the he has neglected to pay the rent. The Appellate Court has not believed the said contention looking to the earning of the sons of the defendant. However, once the defendant is occupying the suit premises as a tenant as per the provisions of the Rent Act he is supposed to pay the rent regularly to the landlord. Since the defendant has failed to pay the rent within the stipulated time, decree for eviction was rightly passed by the courts below on the ground of arrears of rent. I therefore, do not see any infirmity in the decree passed by the courts below which calls for interference of this court in this Revision Application. In the circumstances there is no merit in this Revision Application and the same deserves to be dismissed. The Revision Application is accordingly dismissed. Rule is discharged. Interim relief granted earlier stands vacated. No order as to costs.

However looking to the fact that the petitioner will have to find out suitable alternative accommodation and he is financially very weak I grant one year's time to vacate the suit premises. In the facts and circumstances I direct that the decree for possession may not be executed till 31.3.2001 on condition that the petitioner shall file a usual undertaking before this court within 8 weeks from today. In the said undertaking the petitioner shall mention that he is in exclusive possession of the suit premises and that he will not transfer or alienate the suit property to any one and without obstructing in any manner he will hand over the vacant and peaceful possession of the premises to the landlord on or before 31.3.2001. The petitioner shall continue to pay the mesne profit regularly during the aforesaid period. If the petitioner fails to file the undertaking within 8 weeks from today or if the petitioner commits any breach of the said undertaking it will be open for the landlord to execute the decree for possession forthwith.

Since the learned advocate for the petitioner is not present the office is directed to communicate the operative part of this order to the petitioner-tenant so that the petitioner can file the undertaking within time.

(P.B.Majmudar.J)

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